

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

**VOLVO GROUP  
NORTH AMERICA, LLC**  
Respondent

Cases 15-CA-179071  
15-CA-184912  
15-CA-195183  
15-CA-204842

and

**WALTER EVANS,**  
an Individual

*William Hearne, Esq.*  
Counsel for the General Counsel

*Charles P. Roberts, III, Esq.*  
Counsel for Respondent

**SUPPLEMENTAL DECISION**

SHARON LEVINSON STECKLER, ADMINISTRATIVE LAW JUDGE. The Board remanded two issues from this case for a determination of whether its change in deferral policies affected the outcome of the Charging Party Walter Evans' grievance settlement and his subsequent discharge arbitration. *Volvo Group North America, LLC*, 370 NLRB No. 52, slip op. at 4-5 (2020). The Board called for retroactive application of a change in deferral policy. *United Parcel Service, Inc.*, 369 NLRB No. 1 (2019) (*UPS*), partially remanded (unpub.) sub nom. *Atkinson v. NLRB*, \_\_ Fed.Appx. \_\_, 2021 WL 2850565 (3d Cir. July 8, 2021).

The Board issued an Order to Show Cause why the two issues should not be remanded to the administrative law judge. Neither party responded. As a result, on March 2, 2021 the Board remanded the two issues to me: Whether to defer to the parties' resolution of Evans' May 2016 termination to a 30-day suspension; and, whether to defer Evans' March 2017 termination to an arbitrator's determination. I requested a briefing schedule from the parties, which resulted in General Counsel and Respondent Volvo Group North America (Respondent) submitted timely briefs. In my earlier decision, I included a discussion on credibility of the witnesses, which for the purposes of these issues, was left intact. See *Volvo*, 370 NLRB No. 52, slip op. at 1 fn. 1. I make no changes or additions to the credibility findings.

Based upon the Board's decisions in *UPS*, supra, and *Volvo*, supra, and careful consideration of the transcript and parties' briefs, I find that deferral to the grievance settlement for the 8(a)(3) suspension is warranted. However, deferral to the arbitrator's decision, denying Evans' March 2017 termination grievance, is not recommended because the arbitrator did not consider any of the facts related to the unfair labor practice.

## FINDINGS OF FACT

5           The facts included here show a review of previous findings and are presented for the ease of the reader. Respondent operates a central distribution warehouse for truck parts in Byhalia, Mississippi. Although this facility was relatively new, much of its work resulted from closing its facility in Memphis, Tennessee, where industrial workers, including the warehouse and clerical workers were represented by Local 2406, International Union, United Automobile  
10 Aerospace and Agricultural Implement Workers of America (the Union). This bargaining relationship continued at the Byhalia facility. At the time of hearing, Respondent employed approximately 500 persons working in this location.

15           The collective bargaining agreement at issue was effective December 17, 2010 through December 16, 2020. (Jt. Exh. 1.) The Agreement prohibits any form of discrimination or restraint by either party against any employee due to membership or lack of membership in the Union. (Id. at 51, Art. 27, Sec. 2.) Section 2 of the Agreement provides that management has the right to hire terminate, promote or discipline for just cause and to maintain discipline and efficiency of employees. Respondent documents discipline in disciplinary action reports (DARs).  
20 Discipline for any employee who has seniority can only be disciplined, suspended or discharge for just cause. (Jt. Exh. 1 at 37, Art. 19, Sec. 1.)

25           The Agreement includes grievance and arbitration provisions. Article 20, Section 4 states an arbitrator can only deal with issue(s) presented to him if fully grieved. The arbitrator does not have jurisdiction or authority to change the Agreement's provisions "or to arbitrate away in whole or in part any provision of the Agreement either directly or indirectly, under the guise of interpretation." The arbitrator's decision is final and binding. The arbitrator also is restricted to making certain findings:

30           In rendering a decision involving discipline or discharge because of an alleged violation of a previously published company rule of employee conduct and attendance, the arbitrator will be restricted to deciding only whether or not the employee did in fact violate a reasonable rule.

35           (Jt. Exh. 1 at 40-41.)

40           Respondent employed Evans from August 2014 until March 2017, when he was terminated. He first was employed in Respondent's Columbus, Ohio facility and then transferred to the Byhalia facility. His duties included operating equipment, such as forklifts, reach trucks and orders pickers, to put away parts or to remove parts from shelving. He worked inbound on the third shift from June 2015 until May 2, 2016. His supervisor at first was only Robert Buckingham; later Arnold Ayikwei was assigned as a supervisor to the area. Six months later, Dave Quarles also supervised him on the third shift. Evans' team lead on the third shift was Arthur Braggs. The inbound manager at the beginning was Don Mouledoux.  
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50           In August 2016, Evans began working a first shift outbound forklift position. He was working in that area when he was terminated for the second time in March 2017. Evans primarily operated a reach truck but also operated the order picker. For Evans' outbound day shift assignment, Brad Horncut was the team lead; Mark Leftwich was the supervisor; and the secondary outbound supervisor was Bobby Clark.

## II. EVANS' UNION ACTIVITIES

Since transferring to the Byhalia facility, Evans participated in numerous union activities. He was a member of the Union. He filed grievances regarding holiday overtime (GC Exh. 4, dated 7/6/15) and weekend overtime hours (GC Exh. 5, dated 11/15/15). Management responded to each of the grievances. (GC Exh. 4, 6.) The latter grievance, labeled 2015-17, also included allegations that management, particularly supervisor Robert Buckingham, gave disciplinary sanctions in an arbitrary matter and alleged safety rule violations. Evans hand-delivered this grievance to Manager Mouledoux. (GC Exh. 5; Tr. 188.) Buckingham denied the grievance on January 6, 2016. (GC Exh. 6.) However, the grievance eventually settled, with two persons receiving a monetary award for the overtime. Regarding the safety issues, Respondent assigned three persons to move heavier items to certain racks with more appropriate weight ratings. In grievance 2015-10, Evans was one of the grievants primarily claiming that Respondent did not assign overtime by seniority. Only two persons received payment for the grievance, one of whom was Braggs, who became the team lead.

In 2015 and 2016, Evans distributed Union-related materials to employees at the Byhalia facility. No supervisor said anything to him about the materials or the distribution. (Tr. 505.) Evans became a third shift alternate committeeman in October 2015. The list of elected officials was posted on the employee bulletin board near the break rooms in the Byhalia facility. (Tr. 179; GC Exh. 3.) His duties included filing grievances on behalf of other employees. Evans always included himself in the grievances he filed. (Tr. 503.)

In pre-shift meetings and round table meetings, Evans frequently raised employee concerns, some of which related to the collective bargaining agreement, with management and other employees. Buckingham generally found Evans' behavior disruptive. On March 23, 2016, Respondent disciplined Evans for "wasting time during scheduled work hours" after team leader Braggs attempted to locate Evans in the warehouse. Braggs maintained he found Evans in the break room approximately 25 minutes before the scheduled breaktime. Evans had prior non-disciplinary coaching for going to the break room early and Braggs made a report to Buckingham about what he witnessed. Buckingham issued Evans the written warning. *Volvo*, supra, slip op. at 1-2. General Counsel contended that the written warning was due to Evans' protected activity. The Board found General Counsel did not sustain its *Wright Line* burden regarding animus when Respondent disciplined Evans for wasting time and dismissed the related allegations. *Volvo*, supra, slip op. at 3-4. The Board specifically stated that General Counsel did not sustain its burden that Buckingham's annoyance with Evans' behavior was related to protected activity. *Id.*, slip op. at 4 and fn. 9.

## III. EVANS PROTESTS HIS DISCIPLINE

Regarding the disciplinary action for wasting time, Evans sent Bush a 7-page letter, dated April 12, 2016, with attachments. (R. Exh. 1.) Evans delivered the letter to the office, requesting that the secretary give it to Manager Bush. The letter noted Bush provided the work reports, then stated he had no gaps in his performance. Evans raised that management did not establish "just cause" on the recent disciplinary action and also violated Section 8(a)(1) and (3) of the Act. He further noted that Braggs was having problems with targeting associates who he had problems with and those who challenged his authority. Bush never contacted Evans about the letter; he never read it and said he gave the letter to HR Manager Thompson. (Tr. 1032, 1080.) Thompson never discussed the letter with Bush. (Tr. 1080.)

Evans also sent to HR Director Thomas a copy of the April 12 letter and attachments. She read Evans' letter and believed the letter was about past grievances and complaints regarding grievances. Thomas testified she did not respond to the letter because she thought he should follow the processes described in the collective bargaining agreement and she was not a step in that process. On cross-examination, Thomas reluctantly agreed that the letter included complaints about Braggs' treatment of third shift workers and himself, which Evans characterized as a hostile work environment. She also agreed that Evans stated he was being retaliated against in a way that might violate Section 8(a)(1) and (3). Evans requested an investigation into such conduct. Evans later asked that his discipline be rescinded and removed from files. Thomas did not attempt to find out whether a grievance was filed nor she did speak to Youngdale or Bush about it. She also did not contact Human Resources in Byhalia because the HR person was likely on leave and Thomas herself would have been in charge of the Byhalia facility Human Resources functions. She did not forward the letter to anyone in Byhalia and instead filed the letter until 2 weeks before the hearing in this matter, when she forwarded the letter to Byhalia HR Manager Otto.

IV. MAY 2016: EVANS RECEIVES A 30-DAY SUSPENSION FOR ALLEGED VIOLATION OF SAFETY RULES AND SUBSEQUENTLY IS TERMINATED FOR ALLEGED THREATS

A. *Events Leading to May 2016 Disciplinary Actions*

On April 21, 2016, while working inbound, Evans dropped windshields from his pallet. Evans reported the incident to Supervisor Ayikwei. Evans again asked Simpson to represent him in this matter before Respondent issued discipline. Simpson, who did not witness the event, conducted his own investigation. Simpson found that Respondent did not conduct a proper investigation because the investigative report on the incident was not present. Simpson concluded the incident was a "freak accident"; sometimes manufacturers do not strap down the product properly or sometimes employees do not store items properly. Ayikwei told Simpson that he did not believe Evans should receive severe discipline. (Tr. 99.)

Ayikwei did not document whether Evans improperly lifted the crates. (Tr. 1075.) Respondent considered what level of discipline Evans required for a safety rule violation (Rule 5). After his investigation, Supervisor Ayikwei prepared documentation and recommended a 5-day suspension based upon previous steps of discipline. (GC Exh. 65.) On April 26, 2016, Byhalia HR Manager Leslie Thompson emailed Youngdale, Bush, Ayikwei, and Thomas about what level of discipline to give Evans:

Because of his other steps of discipline the next step would be a suspension. . . .

Continued behaviors are posting a lot of disruption on 3<sup>rd</sup> but I still want to ensure that we have all the documentation needed before he is suspended.

I advised the supervisor that I would like to run these through you once we get to the point of suspension and beyond. Arnold Ayikwei is the supervisor. I am copying [Thomas] so she is aware of the multiple incidents involving [Evans].

(GC Exh. 66.)

Youngdale responded the same day:

The 4<sup>th</sup> step of progressive discipline is a 30-day suspension. Where is the 5-day suspension coming from? We need to be consistent with what is published in the written work rules.

5           Aside, since you have the documentation of his accident, then by all means write him up and suspend him for the 30 days.

10           The key to this discipline, as with all other disciplines, is consistency i.e. I assume we have been writing up other employees for similar incidents? This will be especially important with [Evans], because as you know he has claimed that he is being targeted and retaliated against. So, we do not want to end up in a situation where [Evans] or the union is able to show that we ignored similar incidents with other employees but discipline [Evans] for the same thing.

15   (GC Exh. 66.)<sup>1</sup>

20           Despite Youngdale's reminder on consistency in writing up other employees, Bush, who had been on vacation during the incident, did not check with Thompson to determine whether Respondent was consistent on the discipline. (Tr. 1079.) At some point, Youngdale advised Bush that Aiykwei had not performed a proper accident investigation. (Tr. 1117.)

*B. After Receiving Discipline For Dropping the Item, Evans Makes Angry Statements, For Which He is Terminated*

25           On May 3, Evans and Simpson met with Manager Bush and Supervisor Ayikwei in an office in the front of the facility regarding Evans' dropped items. The door was closed. Bush explained that after this last incident and the previous steps of discipline, he had to give Evans a 30-day suspension. (Tr. 48-49; GC Exh. 18.) Bush gave Evans and Simpson a copy of the discipline. Simpson asked to speak on Evans' behalf. Bush said his decision was final and he  
30           did not need to hear what Simpson has to say.<sup>2</sup> Simpson said the meeting was very short, somewhere between 2 and 5 minutes.

35           According to Bush, Bush opened the door and Evans said to Bush, "You have no fucking integrity." (Tr. 1025.) As they exited the room, Bush testified that Evans repeated that he had no "fucking integrity." (Tr. 1025.)

40           A contract security guard and security supervisor, Candid Patino, was waiting outside the door and followed them. Evans and Simpson walked out of the room, with Evans ahead of Simpson into a hallway, past some open cubicles. As they left the conference room, Evans testified that he asked Bush if Bush intended to respond to his April 12 letter; Bush said if he had time, he would, but if he did not have time, he would not. (Tr. 611.)

45           Bush and Ayikwei were behind Patino; Bush was approximately 8 to 10 feet from Evans. (Tr. 54, 561, 1090) Patino walked Evans, with Simpson, along a hallway with cubicles. Per Bush, along approximately 50 feet of hallway were two offices and two cubicles. (Tr. 1027.) Simpson noted Evans was as upset as someone who just incurred a 30-day suspension, but Evans was not in "a rage." Simpson denied that he heard Evans say to Bush, "I'm going to get your ass" or "I will see you in 30 days and we will handle it then."

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<sup>1</sup> Bush testified that 5-day suspensions could be used only for attendance. (Tr. 1068.)

<sup>2</sup> Bush needed to attend another meeting immediately after meeting with Evans and Simpson.

Bush testified that, as they walked through the hallway in about 1 minute maximum time, Evans loudly said he would be back, this isn't over, and I'll see you in court. Evans made no effort to come towards to Bush. (Tr. 1089.) Patino positioned herself at the exiting door and Simpson walked Evans to his car. Simpson asked Evans if he wanted to file a grievance, which Evans did. Patino documented the incident, as per her practice.

On May 4, Bush emailed HR Director Thomas, Labor Relations Manager Youngdale and the director of the warehouse, Onur Orcun, a statement about the incident with Evans as he left the facility, including a recommendation to terminate Evans for profanity and threatening managers. (GC Exh. 48.) Respondent sent a letter to Evans, dated May 11, 2016, that he was terminated effective May 3. The Union began the grievance process on Evans's termination on May 12. Respondent did not discipline an industrial worker for dropping items before Evans did so. (GC Exh. 39.)

#### V. RESPONDENT AND UNION RESOLVE EVANS' SUSPENSION AND TERMINATION THROUGH A GRIEVANCE SETTLEMENT

On June 30, 2016, HR Director Thomas participated in a third-step grievance meeting regarding Evans' suspension and termination in Byhalia. Also present were HR Generalist Cynthia Hayes and Manager Bush. Present for the Union were UAW Business Representative Davenport and Rod Simpson. Hayes took notes for the meeting. (GC Exh. 36.) Thomas estimated that the meeting lasted an hour.

Davenport raised that 8 or 9 more people had dropped items but only Evans received discipline. Davenport stated the information was requested and, since Respondent had not provided the information, the Union would continue to request it. (GC Exh. 36, p. 2.) Davenport later said that Respondent was picking and choosing who would receive discipline. The Union raised the break room incident as an example of treating Evans differently than others. Davenport talked about the lack of investigation into the break room incident and explained how the lack of proper investigation into the metrics was troublesome. Davenport and Bush discussed the matter for approximately 15 minutes. Returning to the alleged Rule 20 violation, Davenport and Simpson stated they interviewed a consultant who was in the area at the time and that consultant heard no disturbance. After continued discussions, the meeting ended without resolution.

Thomas later discussed the situation with Labor Relations Director Youngdale, who proposed they reinstate Evans back to the step 4 of discipline (30-day suspension) and put aside the discipline for the accident because the information did not show the accident was serious or intentional. (Tr. 263.) On July 8, 2016, the Union was presented with this proposal, which it accepted. The terms specifically stated:

In resolution of both grievances . . . , the Company offers to rescind the Work Rule #5 violation administered to [Evans] on 5/3/16 and reduce the penalty for the Work Rule #9 and #20 violations to a thirty calendar day suspension as the fourth step in the progressive discipline process. [Evans] official date of reinstatement would be 6/3/16, and he will be provided backpay from that date until he physically returns to work.

This grievance settlement is offered without prejudice to the issues involved and without setting precedent.

Evans therefore received no punishment for allegedly dropping parts and the discipline was removed from his files. For the alleged threats, he received backpay, less the 30-day suspension and was given an effective reinstatement date of June 3, 2016.

On Thursday, July 27, 2016, Union International Representative Davenport telephoned Evans about the grievance settlements. The Union did not contact Evans about the possible terms of settlement until the matter was complete. HR Generalist Hayes also called Evans to tell him to report to work on the following Monday at 7:00 a.m. When he returned to work, Evans worked in outbound because he previously bid on a job there.

The Board did not change the finding that Respondent's suspension of Evans for dropping items violated Section 8(a)(3) and (1). Regarding the threats and the termination that became a suspension, Evans lost the protection of the Act pursuant to *Atlantic Steel*, 245 NLRB 814 (1979) and the termination was lawful. No party excepted to that finding that the termination was lawful. *Volvo*, 370 NLRB No. 52, slip op. at 1.

*C. Deferral to the Grievance Settlement For the Dropped Item Is Appropriate*

Respondent argues for deferral to the grievance settlement. General Counsel contends that Evans did not lose the protection of the Act during his promenade down the hall after the disciplinary meeting and that, because Evans was not consulted before the grievance was settled, the settlement process was not fair and regular.

In cases with merit, the Board may defer a grievance settlement as long as it meets the standard set forth in *Alpha Beta Co.*, 273 NLRB 1546 (1985), rev. denied sub nom. *Mahon v. NLRB*, 808 F.2d 1342 (9<sup>th</sup> Cir. 1987). The standard set forth in *Alpha Beta* is: the grievance proceedings were fair and regular; all parties agreed to be bound; and the settlement was not "clearly repugnant" under the Act. *Alpha Beta*, 273 NLRB at 1547-1548. The burden of proof rests with the party opposing deferral, here General Counsel. *Catalytic, Inc.*, 301 NLRB 380 (1991), rev. denied sub nom. *Plumbers and Pipefitters Local Union No. 520 v. NLRB*, 955 F.2d 744 (D.C. Cir. 1992), cert. denied 506 U.S. 817 (1992).

Because General Counsel did not except to the finding that Respondent lawfully terminated Evans for the threats, this allegation should be dismissed without deferring to the grievance settlement. As this termination unfair labor practice was without merit, deferral is not be appropriate. *Alpha Beta*, supra.

The issue that remains is whether deferral is appropriate for the Section 8(a)(3) violation in which Respondent initially suspended Evans for dropping items. Respondent recognized that its suspension for dropping items was not documented properly and completely rescinded the disciplinary action. I continue to find that the grievance procedure was fair and regular and all parties agreed to be bound.

Regarding the failure to notify Evans until after the parties reached a grievance settlement, I am guided by *Catalytic*, supra. There the Board deferred to a pre-arbitral grievance settlement that the grievant and his local union, which was not a party to the collective bargaining agreement, opposed. The administrative law judge had determined that all parties had not agreed to be bound and that not all parties participated in the grievance procedure. The judge instead found that the employer violated Section 8(a)(3) in terminating the shop steward, who also displayed "gross insubordination" in his shop steward role. *Catalytic*, 301 NLRB at 381-382. The Board instead found that deferral was appropriate because the grievant's

authorized representative, the national union, was present throughout the process. Further, the parties had resolved the grievance through the contractual grievance process. Ultimately the Board found that deferral to this type of settlement “further[ed] the purposes and policies of the Act favoring private resolution of labor disputes.” *Catalytic*, 301 NLRB at 382. In line with

5 *Catalytic*, supra, the Union, as Evans’ representative, presented Evans’ case and obtained a grievance settlement in the confines of the parties’ contractual agreement.

The last factor is whether the settlement is repugnant to the Act. I agree with Respondent that the record shows Evans was fully reinstated from the “dropped item” grievance and received backpay, with the discipline removed from his record. Because the grievance settlement made Evans whole for this disciplinary action, it is similar to a Section 8(a)(3) remedy. The Union generally discussed that Evans was treated disparately. Although the unfair labor practice was not specifically addressed for Evans, it is not “clearly repugnant” because of the similarity to what Evans would have otherwise received.

Evans’ grievance settlement is contrasted from the one in *Valley Material Co.*, 316 NLRB 704 (1995). No deferral was available because the grievant’s termination settlement was reduced to a suspension and gave the grievant a final warning, which the judge found was not consistent with the Act. The judge also found that the process was repugnant to the Act because the union had demonstrated hostility to the grievant. *Id.* at 708-709.<sup>3</sup> The record here shows no evidence of Union hostility towards Evans and that the settlement provided everything but a posting.

I therefore recommend deferral to the grievance settlement and dismissal of the related complaint allegations.

#### VI. AFTER REINSTATEMENT, EVANS CONDUCTS UNION ACTIVITIES

Evans returned to work on August 1, 2016, in outbound on first shift and was working there when he was terminated. His supervisors were Mark Leftwich and Bobby Clark, with whom Evans he had no problems. In March 2017, the outbound department was divided into four operating units and each usually held its own pre-shift meeting.

From August 2016 until March 2017, Evans distributed printed materials to employees during break times or before and after shifts. (See, e.g., GC Exh. 28.) He also distributed t-shirts. In January 2017, Evans requested the Union file a grievance about overtime and the seniority list. After Respondent investigated the grievance, a number of employees, including Evans, received compensation. (Tr. 370-371.) From the time of his reinstatement in August 2016 until his termination on March 17, 2017, Evans testified that he could not recall any management actions that could be characterized as hostile or retaliatory. (Tr. 565.) Other than the grievance, no evidence shows Respondent was aware of any of these union activities.

In 2017, Respondent shortened the preparatory buzzer time from 5 minutes to 3 minutes. The buzzer had been in place at 5 minutes since 2015. The change came after managers complained that industrial workers lined up to take break or waited in the breakroom even before the 5-minute buzzer rang. (Tr. 1047.) This change was announced at a meeting with all outbound employees on March 16, 2017.

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<sup>3</sup> Also see *Roadway Express, Inc.*, 355 NLRB 197 (2010), *enfd.* 427 Fed.Appx. 838 (11th Cir. 2011) (deferral not appropriate when union hostility towards grievant is proven).



Although Mark Leftwich or Bobby Clark usually conducted the outbound pre-shift meeting, Director Onur Orcun, Kevin Bush and Bobby Clark attended the meeting on March 16, 2017. The meeting lasted approximately 15 to 20 minutes. Orcun had not attended a pre-shift meeting before this time. Early in the meeting, Orcun announced that Respondent was implementing a different procedure for employees taking breaks. The buzzer to announce lunch times already rang at 10 minutes before break. During that time, employees would be allowed to prepare for breaks by walking to the break room, or parking and charging their vehicles. Orcun announced that the buzzer instead would ring at 5 minutes before break time and employees would have to line up at the warehouse door until official break time before entering the break room. Per Bush, no employees would be allowed in the break room until the second buzzer. Bush also talked about implementing the new system, including in disciplinary action under the Code of Conduct, Rule 5, Wasting Company Time for not following the system.

A number of employees asked questions and Orcun explained that half the warehouse employees wasting 2 to 3 minutes per day added up to a significant amount of wasted production time. When asked whether the rule would be enforced equally or up to management, Orcun said that management would have discretion over who received discipline. After approximately 15 minutes, Evans asked Orcun if the new system was a change in terms and conditions of employment. When Orcun asked for an explanation of the question, Evans stated, “[U]nder the collective bargaining agreement isn’t this a material item that needs to be bargained for, and that a request to bargain needs to be filed or should be filed in regard to this change of past practices and policies.” (Tr. 378.) Orcun testified that he recalled Evans raising the terms and conditions of employment. (GC Exh. 63 at 2.) Another employee then asked why this change was happening, especially with the overcrowded conditions in the bathrooms. Others commented that the break rooms did not have enough microwaves. Bush said the change was within management discretion. Evans then said, “Who told you that? Who told you that?” (Tr. 380.) Bush did not answer Evans but argued with another employee.

When the employees were dismissed from the meeting, Evans went into the warehouse, carrying his equipment. Before Evans reached his equipment, Orcun and Bush walked up to him. Bush said Evans should not be carrying his equipment but have it on.

#### VII. ON MARCH 20, 2017, RESPONDENT TERMINATES EVANS AFTER HE BACKS OUT OF AN AISLE

Safety rules for operating equipment in the warehouse include not backing into or out of aisles. (Tr. 82; GC Exh. 58 at 1.) These rules have been in place since 2015.

##### A. *Review of the Events Leading to Evans’ March 2017 Termination*

The warehouse has main aisles that permit two-way traffic. The aisles on either side of the main aisles, where parts are put away and retrieved, primarily have one-way traffic in alternating patterns with aisles in the middle, or “tunnels,” to permit access to the adjacent aisle traveling in the opposite direction. These aisles are numbered and coordinate with directions to the industrial workers to put away or obtain parts. Industrial workers operate various motorized vehicles and receive training and certification for each piece of equipment they operate. Training includes safety and operating equipment in reverse. Although employees may back up in certain areas of the warehouse, they are not permitted to back in and out of aisles.

The three main aisles allow traffic, both mechanical and foot, in two directions. A number of the aisles, used for picking, can be traversed only in one direction and bisect the main aisles. The aisles for picking have racks where the merchandise is stored. Some of the

aisles have cross tunnels to cut across the racks without going into the main aisles. Near the area where Evans backed up was a managers' desk, where the managers and supervisors were conducting a meeting.

5           The day after the outbound meeting about the break buzzer, Friday, March 17, 2017, at about 8:30 a.m., Evans admittedly backed out of an aisle while working on an order picker. Evans testified that he needed to pick an item in aisle 127. Aisles 126 and 128 travel in the same direction and allowed entry from the main aisle B; aisle 127 travels in the opposite direction. Aisle 129 allows two-way traffic. Evans pulled into aisle 126 from main aisle B. He testified that he backed out of aisle 126 because the aisle was blocked by a safety cone and other pieces of equipment in the aisle, including another order picker and a reach truck. Evans sat in the aisle for approximately one minute, observing that the reach truck operator flipped his cargo upside down and the cargo box sides came apart. Evans did not want to block the aisle and was further concerned about the safety cone. Evans could not reach the cross tunnel to cut through to another aisle. He backed the order picker into main aisle B for about 20 feet to straighten out and prepared to go forward. The order picker had no mirrors and Evans had to look around to back up. As he backed up, Evans testified that he blew his horn.

20           At about 8:30 a.m., the management team in the outbound area began its daily operational meeting in the main aisle, approximately 80 feet from aisles 126-128. Manager Bush, Supervisor Bobby Clark, Operational Support/Safety Supervisor Burt Barton, inbound team lead Deadrick Simelton, Quality Supervisor Randy Sheeley were present in the meeting. During the meeting, Bush pointed out that someone on a truck was backing out into the aisle and pointed at the person backing out. (Tr. 1035.) Bush could not see who was on the vehicle. 25 Bush said the person started to back up again. Clark, who had his back to the aisle in question, immediately turned around and saw the person backing out of the aisle into the main aisle. Barton, in charge of safety, started to move towards the truck. Clark also went to the truck. Clark testified that Evans was backing out of aisle 128.

30           According to Evans, Supervisor Clark walked up to him as he prepared to drive forward. Evans testified that Clark asked to speak with him but went to speak with two other drivers first. Evans testified that he drove toward a cross aisle into aisle 127 and obtained his item. (Tr. 413-414; GC Exh. 29, DLX log.) When Clark and Evans were able to converse, Clark told him he should not be backing out of the aisle.

35           Clark testified that he reached Evans while Evans was still backing up. He told Evans that he incurred a safety violation, which Bush had pointed out, and that they would need to talk about it later. Clark further testified that Evans admitted to him that backing out was a safety infraction but he had to get out. Clark told him the issue would be addressed later in the day but would allow him to complete the back out. The main aisle was clear and Clark allowed him to continue because Evans was already at least half-way into the aisle. (Tr. 699, 715.) By that time, Barton was at the site, taking cell phone photographs of the incident. Clark and Barton returned to their meeting and discussed the safety violation. (Tr. 700.)

45           At about 9:30 a.m., Orcun, Otto and the managers met for the management escalation meeting to review the previous day's production and deal with any issues. Although personnel issues were not discussed usually at these meetings, safety issues were. Shortly before the meeting, Bush, with Clark present, advised Otto that Evans had a safety issue after the meeting. At about 10 a.m., the three discussed what they observed with Evans. Otto asked Bush to have each witness send him an email and the photographs taken by Barton. Bush sent his statement and had no further involvement as Evans did not report to him. (Tr. 1038.)

At 10:45 a.m., Simelton sent an email to Otto and Bush stating only that he saw Evans backing out of a location. He testified he did not know whether Evans sounded his horn, but he was 60 to 70 feet away. He also could not recall specifically whether the main aisle had traffic but at that time of the morning, traffic was usually present in the main aisle.

After hearing from Bush and Clark, Otto notified Labor Relations Manager Youngdale, HR Director Thomas, and Director Orcun because Evans' unfair labor practice hearing was scheduled for March 27 (10 days later).

At about 10:45 a.m., HR Manager Otto met in his office with Evans and the first shift union committeeman, Richard Green. (Tr. 408, 913-914.) Otto testified that, before this incident, he would not have recognized Evans. Evans admitted backing out of the aisle because others were in the aisle and to prevent an individual from being trapped in the aisle without egress. Evans said to block would have violated OSHA standards. Evans further said he was careful when he backed out and honked his horn while doing so. Otto asked Evans to write a statement and permitted Evans to write the statement after lunch.

Evans' recollection of what Otto specifically said was somewhat fuzzy. He recalled Otto raised that he backed out of an aisle and allowed the two employees during their lunch to return to aisle 126 to document what happened. Evans stated he and Green used their phones to take pictures of the mess in aisle 126, which was still there. These pictures were not available for hearing. After lunch, Evans provided Otto with a handwritten statement. (GC Exh. 30.) At the time he wrote the statement, Evans claimed he could not recall the exact location of the item and later completed it. (Tr. 574, citing Jt. Exh. 2 at 301.) Evans provided his DLX log at some point. Evans continued to work in the warehouse for the rest of his shift.

At 11:25 a.m., Clark sent Otto an email to document what he observed. (Tr. 701, 718; Jt. Exh. 3, Company Exh. 16.) The email only stated Clark witnessed Evans backing up and includes no details, such as which aisle or whether Evans sounded his horn. The failure to sound the horn would be another safety violation.

After receiving the emails, Otto conducted further investigation, comparing aisle 128, where the supervisors said Evans was backing out, and aisle 126, where Evans said he backed out. He tried to discover whether a safety cone was present, as Evans said one was in the area. He also reviewed Evans' DLX logs for Evans' picks. (Tr. 951; GC Exh. 29.) The record reflects that Evans had been making a pick in aisle 127 at approximate 8:39 a.m., a few minutes after the managers observed Evans. Otto did not go back to Evans to clarify that the pick records were not consistent with Evans' recollection of which aisle he was in. (Tr. 952-954.)

Otto reviewed Evans' disciplinary logs to determine Evans' stage of discipline. Otto discovered that Evans was a step 4 in his discipline and the next step was step 5, termination. Otto, per his usual practice, drafted a report. He then submitted the report to Youngdale and Thomas on Monday, March 20. (GC Exh. 51.) According to Otto, Bush was not consulted about the decision to terminate Evans. (Tr. 924.) Otto testified that he was unaware that no one received discipline at any level for backing out of an aisle before Evans. (Tr. 968.)

On March 20, 2017, Evans and an alternate committee person attended a meeting in Otto's office with Otto, outbound manager Derek Hare and supervisor Mark Leftwich. Otto read a statement to Evans from a disciplinary action report, identifying that Evans violated work rule 5. Evans was terminated pursuant to Respondent's progressive discipline policy. (GC Exh. 31.) Otto then asked Evans if he had anything to say. Evans did not and refused to sign the

disciplinary report. However, as he left the room Evans said, "I hope you got it right this time." (Tr. 928.) The Union grieved this termination, which eventually was arbitrated.

Regarding disparate treatment evidence, Respondent gave all levels of discipline for safety, Rule 5 violations. Evans was the only one terminated. Otherwise, the disciplinary actions included over 35 verbal reminders, several written reminders, several written warnings, 2 5-day suspensions, and 1 30-day suspension. The level of prior discipline for these employees was unknown, as was whether they had any union activity. A number of the reported safety violations with disciplinary action occurred in 2015 and 2016. A few of the examples pre-dated Evans' discipline. One was traveling on the wrong side of aisle, failing to come to a complete stop and failing to sound the horn on December 8, 2015. (GC Exh. 39 at 6). A 30-day suspension was for speeding in an area where the posted limit is 9 miles per hour. Another received a verbal reminder for failing to stop at an intersection on August 8, 2016. (GC Exh. 39 at 28.) On March 15, 2017, an employee received a written reminder for running a stop sign. (GC Exh. 39 at 43-45.)

After Evans' termination, three other employees were disciplined for backing out of or into aisles. (GC Exh. 39 at 73; GC Exh. 41.) No one was disciplined for backing out of an aisle before Evans' March 17 termination.

#### *B. Respondent and the Union Arbitrate Evans' Termination Grievance*

Evans' termination grievance reached arbitration on October 4, 2017. (Jt. Exhs. 2, 3, 4.) Respondent asked the arbitrator to hear and decide the issues contained the Section 8(a)(3) and (4) unfair labor practice charges. The Union objected as it was not a party to any of the unfair labor practice charges. The arbitrator asked the parties to discuss the issue in the post-hearing briefs. Despite this ruling, Evans raised the Board charges during his arbitration testimony. The arbitrator warned that things were getting far afield. (Jt. Exh. 2 at 320-321.) The arbitrator's evidence was therefore limited to whether Evans backed out of the aisle.

The Union's International Servicing Representative, Chuck Davenport, represented Evans. Respondent was represented by counsel. The parties were permitted to present witnesses, examine and cross-examine witnesses, and to enter documentary evidence into the record. The witnesses were sequestered and nothing in the arbitration transcript reflects any violation of the sequestration order. Both parties were permitted to submit briefs to the arbitrator.

The arbitrator's decision identified one issue that both parties presented for determination: Whether Evans was discharged for just cause. The arbitrator then stated that Respondent requested determination on 2 additional issues: Whether Evans was discharged due to his union and/or other protected activities; and whether Evans was discharged because he filed Board charges and gave evidence and testimony to the Board. The arbitrator denied the grievance and upheld Evans' termination. (Jt. Exh. 4.) The arbitrator cited applicable contractual provisions, including Art. 20 Sec.4, limiting his jurisdiction to issues fully grieved and Art. 19 Sec. 1, in which employees could be discharged only for just cause. The arbitrator found that Evans backed out of aisle 128 instead of aisle 126, which was a violation of Rule 5. He did not rely upon Respondent's allegation that Evans failed to honk the horn as well, as it was unlikely that they heard the horn. Because Evans was at the step of progressive discipline requiring termination, the arbitrator determined Evans was discharged for just cause. (Jt. Exh. 3 at 14.)

Regarding Respondent's desire to obtain determination of whether Evans' union activity and Board charges were involved in the termination, the arbitrator found the record lacking regarding the unfair labor practice charges and their contents or whether evidence existed to determine whether union activities played a role in his determination. Agreeing with the Union, the arbitrator limited his determination to just cause as required by the collective-bargaining agreement and did not address whether Evans was discharged due to his union and/or protected activities. (Jt. Exh. 3 at 15.)

C. *Should the Section 8(a)(3) Termination ULP Be Deferred to the Arbitrator's Decision?*

In the prior decision, I found that Respondent violated Section 8(a)(3) and (1) when it terminated Evans. Evans expressed concerns at the meeting the day before he backed out of the aisle, with Orcun and Bush present. Raising concerns about breaks with other employees at the meeting is concerted activity. Bush, who witnessed Evans backing out, was present at the meeting the previous day. Orcun recalled that, during the meeting with other employees, Evans raised the collective bargaining agreement. Bush was familiar with Evans from prior activities, such as the previous unlawful disciplinary actions. Respondent is tasked with the knowledge and animus of its supervisors.<sup>4</sup>

1. Applicable law

The Board has considerable discretion in determining whether to defer to the arbitration process when doing so will serve the fundamental aims of the Act. *Wonder Bread*, 343 NLRB 55 (2004). Also see: *United Technologies Corp.*, 268 NLRB 557 (1984); *Collyer Insulated Wire*, 192 NLRB 837 (1971); *Dubo Mfg. Corp.*, 142 NLRB 431 (1963). The Board's standard for deferring to arbitral awards is also solely a matter for its discretion, as Section 10(a) of the Act expressly provides that the Board is not precluded from adjudicating unfair labor practice charges even though they might have been the subject of an arbitration proceeding and award. *Babcock & Wilcox Construction Co.*, 361 NLRB at 1129.

Pre-*Babcock*, supra, the Board deferred to arbitral decisions in cases in which the proceedings appear to have been fair and regular, all parties agreed to be bound, and the decision of the arbitrator is not clearly repugnant to the purposes and policies of the Act. *Spielberg Mfg. Co.*, 112 NLRB 1080, 1082 (1955). In *Olin Corp.*, 268 NLRB 573 (1984), the Board held that it would condition deferral on the arbitrator having adequately considered the unfair labor practice issue, which is satisfied if: the contractual issue is factually parallel to the unfair labor practice issue, and the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. Id. at 574. The Board stated that it will not require an arbitrator's award to be totally consistent with Board precedent; however, deferral will not be found appropriate under the clearly repugnant standard where the arbitration award is "palpably wrong" or "not susceptible to an interpretation consistent with the Act." Id. Under *Spielberg*, supra, and *Olin Corp.*, supra, the burden of proof is on the party opposing deferral to the arbitration award. *Airborne Freight Corp.*, 343 NLRB 580, 581 (2004). In this situation, General Counsel has the burden of proof.

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<sup>4</sup> The termination was also alleged as a violation of Section 8(a)(4), which I dismissed and to which no party excepted. *Volvo*, supra, slip op. at 1 fn. 1.

## 2. Parties' positions

The parties agree with the prior decision's assessment the first two criteria, that the arbitration procedures appear fair and regular and the parties agree to be bound through their collective bargaining agreement. Then the parties' arguments diverge regarding whether the arbitrator adequately considered the unfair labor practice.

In support of deferral, Respondent argues that the administrative law judge cannot substitute her own judgment where the findings of facts are based upon credibility (citing *Aramark Services, Inc.*, 344 NLRB 549 fn. 1 (2005)). Respondent also contends that the arbitrator's decision is first analyzed on its faced and where just cause for termination is found, deferral is the correct resolution. See *Texaco, Inc.*, 279 NLRB 1259 (1986). Respondent contends that failing a finding of deferral, the administrative law judge should determine that it did not violate the Act. The Board left intact the conclusion that Respondent committed a Section 8(a)(3) violation when it terminated Evans this time. Instead, the Board limited the inquiry to making findings, based upon *UPS*, supra, whether to defer to the arbitrator's decision. *Volvo*, 370 NLRB No. 52, slip op. at 4-5.

General Counsel contends that deferral is inappropriate because the contractual and unfair labor practice issues are not parallel.

## 3. The arbitrator did not sufficiently consider the unfair labor practice

"An arbitrator's power is both derived from and limited by, the collective-bargaining agreement." *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 744 (1981), citing *Alexander v. Gardner-Denver Co.*, 415 US 36, 54 (1974). An arbitrator is tasked with effectuating the contractual intent of the parties but not the statute, which may result in an employee losing certain statutory protections. See generally *Barrentine*, 450 US at 744-745 (FLSA claim). The Board's long-standing deferral policy requires that the facts between the unfair labor practice and the contractual issue must be parallel and the arbitrator was presented with sufficient facts relevant to resolution of the unfair labor practice. *Olin*, supra, at 574; *Anderson Sand & Gravel Co.* 277 NLRB 1204, 1204-1205 (1985). The factual question should be "coextensive" with the statutory issue. *Drummond Coal Co.*, 277 NLRB 1618, 1620 (1986).

A number of cases demonstrate when facts are parallel, permitting deferral. The situation in *Anderson Sand & Gravel*, 277 NLRB at 1204, demonstrates when statutory and contractual facts are parallel. The issue presented to the arbitrator was whether employees discharged under a no-strike clause, which provided that a strike of less than 24 hours was protected, required contractual interpretation and therefore the issues were "coextensive." *Id.* In addition, the arbitrator was "generally" provided with facts related to the statutory issue of whether they were terminated in violation of Section 8(a)(3). As the evidence was the same for finding an unfair labor practice, the Board found that deferral to the arbitrator's decision was appropriate. *Id.* at 1205.

In *Howard Industries*, 365 NLRB No. 96 (2017), deferral to the arbitrator's decision was appropriate because among the issues raised was whether the employer suspended and terminated the grievant due to "his union activities as chief steward." The parties presented the arbitrator with underlying documents showing that unfair labor practices charges were filed. The arbitrator concluded that the grievant was not terminated for his union activities. Applying the more stringent standard in *Babcock & Wilcox Construction*, supra, the Board affirmed the

administrative law judge's determination that deferral was appropriate because the arbitrator considered the unfair labor practice allegations and sufficiently weighed the evidence.<sup>5</sup>

When an arbitrator finds just cause for termination without developing a record on the unfair labor practice, deferral is not appropriate. *Wheeling-Pittsburgh Steel*, 277 NLRB 1388, 1392-1393 (1985), enfd. 821 F.2d 342 (6th Cir. 1987). One aspect of the arbitrator's decision here is that he claimed he did not have contractual authority to consider the unfair labor practice.

A number of cases determined that the arbitrator did not adequately consider the unfair labor practice issues and therefore made deferral inappropriate. An example is *Hilton Hotels Corp. d/b/a The Denver Hilton Hotel*, 287 NLRB 562, 563 (1987): In the arbitration, the union did not litigate when certain strikers were permanently replaced before they made offers to return to work, which was the issue in the unfair labor practice case but not in the arbitration. *Id.* The Board found deferral there was inappropriate and found the unfair labor practice violation. *Id.*<sup>6</sup>

Respondent maintains that the Board cannot "first determine the merits of the unfair labor practice allegation and then contrast that determination with the arbitrator's award". . . . but must "analyze at the arbitrator's decision on its face." (R. Supp. Br. at 18-190, citing *Texaco*, supra.) The facts in *Texaco* are a bit different than what is at issue here. There the alleged discriminatees were suspended and terminated for alleged strike misconduct. The arbitrator took evidence about those allegations, deciding that the employees would be reinstated without backpay. *Texaco*, 279 NLRB at 1259. The Board determined that: deferral was appropriate because the arbitration and unfair labor practice were parallel; and the arbitrator and judge were both presented with the facts generally relevant to resolving the unfair labor practice. *Id.* at 1259-1260. But that is not the case here.

As is the case here, the facts surrounding the unfair labor practice were not before the arbitrator. The arbitrator could not and did not have any basis for considering the statutory issue. Although the collective bargaining agreement included provisions to prevent discrimination based upon union activity, the arbitrator took no evidence on the matter, which are essential to a determination whether the Act was violated. As the arbitrator explicitly stated he made no such consideration of the unfair labor practices, deferral is not an available route. *Pioneer Finishing Corp. v. NLRB*, 667 F.2d 199, 202-203 (1st Cir. 1981).<sup>7</sup> Evans therefore is entitled to remedies under the Act.

#### SUPPLEMENTAL CONCLUSIONS OF LAW

1. Respondent's Section 8(a)(3) and (1) violation of the May 3, 2016 suspension of Walter Evans is hereby deferred and that complaint allegation is dismissed.
2. On March 20, 2017, Respondent violated Section 8(a)(3) and (1) when it discharged Walter Evans because of his union activities.

<sup>5</sup> Also see *Sachs Elec. Co.*, 278 NLRB 866 (1986) (arbitral issue was whether the employer laid off union steward because of his union activities).

<sup>6</sup> Also see: *General Warehouse Corp.*, 247 NLRB 1073 (1980) (arbitrator's decision did not indicate any consideration of protected activities), enfd. 643 F.2d 965 (3d Cir. 1981).

<sup>7</sup> In favor of deferral, Respondent cites *Aramark Services, Inc.*, 344 NLRB 549 (2005). However, the Board found that the arbitrator's findings were not repugnant to the Act and deferred to the arbitrator. The Board also found that all facts relevant to the discharge were presented to the arbitrator. *Id.* at 551. That is not the case here.

3. The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

### REMEDY

- 5 Having found Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act.

- 10 Having found that Respondent unlawfully terminated Walter Evans on March 20, 2017, it must offer him reinstatement to the position from which he was unlawfully terminated. Respondent is to offer Evans reinstatement in the position that he previously worked, or if such position no longer exists, in a substantially equivalent position. I shall further recommend that the Board order Respondent to make Evans whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent will compensate Walter Evans for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. *King Soopers, Inc.*, 364 NLRB No. 93 (2016), *enfd.* in pertinent part 859 F.3d 23 (D.C. Cir. 2017).  
 20 Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, *supra*, compounded daily as prescribed in *Kentucky River Medical Center*, *supra*.

- 25 In accordance with the Board's decision in *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016), Respondent shall be ordered, within 21 days of the date the amounts of backpay are fixed, either by agreement or Board order, to submit and file the appropriate documentation allocating the backpay awards to the appropriate calendar quarters or periods with the Regional Director. In addition to the backpay allocation report, Respondent shall file with the Regional Director for Region 15 a copy of Evans' corresponding W-2 form(s) reflecting the backpay award. *Cascade Containerboard Packaging*, 370 NLRB No. 76 (2021).  
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- Respondent shall also be required to remove from its files any reference to the unlawful discharge and notify Evans in writing, within 3 days, that this has been done and that the unlawful discharge will not be used against him in any way.  
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### ORDER

Respondent Volvo shall

- 40 1. Cease and desist from  
 a. Discharging or otherwise discriminating against employees because of their union activities.  
 b. In any like or related manner interfering with, restraining, coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 45 2. Take the following affirmative action necessary to effectuate the policies of the Act.  
 a. Within 14 days from the date of this Order, offer Walter Evans full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.



- b. Make Walter Evans whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section.
- c. Compensate Walter Evans for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
- d. File with the Regional Director for Region 15 a copy of Walter Evans' corresponding W-2 form(s) reflecting the backpay award.
- e. Within 14 days from the date of this Order, remove from its files any references to the unlawful suspension and discharge, and within 3 days thereafter, notify Walter Evans in writing that this has been done and the discharge will not be used against him in any way.
- f. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- g. Post at its Byhalia, Mississippi facility copies of the attached notice marked "Appendix."<sup>8</sup> Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since March 20, 2017.
- h. Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply with this Order.

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<sup>8</sup> If the facility involved in these proceedings is open and staff by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Washington, D.C.  
September 20, 2021

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Sharon Levinson Steckler  
Administrative Law Judge

**APPENDIX**  
**NOTICE TO EMPLOYEES**  
**POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD**  
**An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you for engaging in union or protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Walter Evans full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Walter Evans whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest, and WE WILL also make Walter Evans whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Walter Evans for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 15 a copy of Walter Evans corresponding W-2 form reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharge of Walter Evans, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov). 600 South Maestri Place, 7th Floor, New Orleans, LA 70130-3413 (504) 589-6361, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/or by using/15-CA-179071](http://www.nlr.gov/case/or%20by%20using/15-CA-179071) the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF  
POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER  
MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR  
COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL  
OFFICE'S COMPLIANCE OFFICER, (504) 589-6389.